cify the amount of the debt in his notice demanding payment for the validity of a notice will not be imperilled by an error in the statement of the amount. However, there is little point in requiring that the notice should state the amount if the correctness of the amount is not essential to the validity of the notice. In this situation insistence on the requirement may result in creditors taking insufficient care in stating their amount of the debt, thereby contributing to confusion on the part of debtors. The foregoing examination supports the view that the interests of the party will be more adequately protected by the principle that the debtor must be allowed a reasonable opportunity to comply with the demands before the creditor can enforce or realize the security then by the adoption for the suggested proposition that the notice of demand must specify the amount of the debt. In determining whether the debtor has had such an opportunity it will be relevant to take account of the debtor's knowledge, lack of knowledge and means of knowledge of the amount due and of the information which the creditor has provided in that respect, including the response which he has made to any inquiry by the debtor.

After adopting the reasoning of the High Court of Australia above, Walton J said at p 216:

Indeed it is quite clear that knowledge of the precise amount of the sums outstanding is only required in the exceptional case, because in most cases, as in the present case, the debtor has no real means whatsoever of paying off the sum which is due and it would seem to be idle to put the creditor to what might be very considerable expense in ascertaining the precise amount due when there is no likelihood that that will represent a realistic target at which the debtor can aim. If, on the contrary, the debtor is in a position to pay off the sum demanded and wishes to know the exact and precise sum, he can communicate with the creditor and ask the creditor what sum he is expecting to be paid. Under those circumstances, one imagines that the creditor would say, 'Well, the last accounts, which are not complete, show in fact the sum of £X owing from you. If you can pay that sum at once, then we need not worry too much about the additional sum; we can settle that later', or something along those lines. At any rate, on this point, I propose to follow the Australian case, which seems to me to be redolent of good common sense.

In the case before me the defendants were directors of Feng Sheng. Feng Sheng was supplied with regular monthly statements from the bank setting out its indebtedness and the interest rate charged. It is idle for them to claim that they did not know what the amount of their indebtedness was. Indeed when this suit was filed the third defendant on behalf of the other two was able to contest the interest calculations to the point where the plaintiffs were driven to reduce their claim on the basis of a computation based on the original approval letter. Consequently, when judgment was given by the senior assistant registrar it was for a sum which was the least that the plaintiffs could sue for.

Side by side with this, one cannot ignore the statement of Feng Sheng's director, the first defendant and its pro tem liquidator who issued notices for the creditors' voluntary winding up in which they admitted that they owed the bank $249,475.49 as on the date for which that notice was conditioned.

Consequently I hold the submission of counsel for the defendants on this aspect of the case to be without any real substance.

As for the other line of argument with regard to the alleged variation of the security I hold that this is also devoid of merit. The three defendant directors were active parties in applying for the increase in the financial facilities accorded to Feng Sheng by the plaintiffs. Not only did they negotiate this increase but they also signed the approval letter acknowledging and confirming the arrangements. It is idle for the defendants' counsel to contend that because they did this with their directors' hats on, their minds were oblivious to the liabilities they were taking upon themselves as guarantors. The cases cited by Mr Yeoh and which I have referred to above are conclusive.

I would also add in passing that it is not irrelevant that Feng Sheng availed itself of the increased facility some time after the second guarantee was executed .

In all the circumstances I would dismiss this appeal by the defendants with costs to be taxed and paid by the defendants to the plaintiffs.

*Appeal dismissed.*

Solicitors: *Chooi & Co*; *Teh & Associates*.

Reported by *Ng Sheau Jiuan*

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## Re Hee Chun Meng

HIGH COURT (JOHOR BAHRU) – PETITION FOR LETTERS OF ADMINISTRATION NO 179 OF 1985
SHANKAR J
5 FEBRUARY 1988

*Succession – Probate and administration – Deceased killed in motor accident – Deceased left no personal effects or immovable property – Sole asset an estate claim relating to motor accident – Whether administration bond or sureties required when extracting letters of administration – Whether praecipe fee payable under item 41, Appendix B of Rules of High Court 1980 – Contention that 'estate' does not include chose in action – Whether acceptable – Probate and Administration Act 1959, ss 2 & 35(1)(b) – Rules of the High Court 1980, Appendix B item 41*

*Words and Phrases – 'Estate' – Probate and Administration Act 1959, s 2*

The petitioner is the brother of the deceased who was killed in a motor accident. The deceased left no tangible assets movable or immovable but the petitioner inserted an item into the estate duty affidavit stating that the sole asset left by the deceased was

an estate claim relating to the motor accident estimated at $149,760. Subsequently, the petitioner applied to take out letters of administration to the deceased's estate for the purpose of instituting the estate claim under s 8 of the Civil Law Act 1956. However, he was informed by the court registry that an administration bond was required to be executed by two sureties and a fee of $150 paid to the court before the letters of administration could be extracted. The petitioner thus made an ex parte application to the court for the determination of the following questions:

(a) Where a deceased left no personal effects and no immovable property at all of his own after his death and he left a cause of action in negligence against a third party for the benefit of his estate under s 8 of the Civil Law Act 1956, whether in such a case, and in the present case,
   (i) any security should be required under s 35(1)(b) of the Probate and and Administration Act 1959; and/or
   (ii) any surety to the administration bond is required under O 71 r 34(3)(c) of the Rules of the High Court 1980.

(b) Whether, in such a case, as in the present case, any fee is payable for extracting the letters of administration whether under Schedule B of the Rules of the High Court 1980, if applicable, or otherwise.

The petitioner contended that no administration bond or sureties are required and that no fee should be payable to the court under item 41 of Appendix B to the Rules of the High Court 1980 for extracting the grant in such cases. He argued that the word 'estate' in s 35(1)(b) of the Probate and Administration Act 1950 ('the Act') does not include choses in action and as the deceased's only asset is a chose in action, he accordingly left no estate. As such, no fee should be payable under item 41, Appendix B.

**Held:**

(1) Section 2 of the Act provides that 'estate' means all property which if a person died intestate would vest in the Official Administrator under s 39. Section 2 also provides that 'property' includes a thing in action and any interest in movable or immovable property. Thus, under the law, a thing in action is property. Even though it is intangible, it is a right which could move from one person to another depending upon capacity to sue and in that sense a thing in action could be said to be movable property.

(2) In the present case, the real value of the chose in action cannot be determined until the claim has been finally resolved by agreement or litigation. Consequently, if s 35 of the Act is applied in the ordinary way security has to be given and it would ordinarily be by bond in the prescribed form by the guarantee and two sureties in the amount at which the estate is sworn. However, s 35 is not inflexible. The court can give relief in an appropriate case by increasing or decreasing the number of sureties or dispensing with them altogether.

(3) There is a lacuna under item 41 of Appendix B to the Rules of the High Court 1980 since it does not provide for assets of unknown value. Until the Rules are amended, O 91 r 2 of the Rules of the High Court 1980 does provide a way out. The fees and percentages by this Rule are to be collected in such manner as the Chief Justice may from time to time direct. Just as it is usual for the payment of the estate duty to be postponed where the value of the assets have to be ascertained so also it seems to me that there is nothing to preclude a petitioner in a proper case from applying for the praecipe fee to be postponed until the value of the chose in action has been ascertained.

(4) The answer to the questions of law posed is thus: whilst security and sureties to the administration bond can legally be required in all cases where the only asset of a deceased's estate is a chose in action, the actual requirement of such security or surety can be decided only upon the facts of each particular case. The minimum fee has to be paid for extracting letters of administration in all such cases. The proper fee payable can be taken when the true value of the asset has been ascertained.

**Cases referred to**

1 *Datin Peggy Lilian Taylor* v *Leong Yuet Yeng & Anor* [1985] 2 MLJ 456 (refd)

2 *Kwa Hock Kee & Anor* v *Kwa Sian Seng* [1985] 2 MLJ 283 (refd)

**Legislation referred to**

Probate and Administration Act 1959 ss 2, 25(1)(b)

Rules of the High Court 1980 O 71 r 34(3)(c), O 91 r 2, Appendix B item 41

*Ong Chee Yong* for the petitioner.

*Cur Adv Vult*

**Shankar J:** The petitioners for letters of administration in this matter made an ex parte application for the determination of the following questions, namely:

(i) Where a deceased left no personal effects and no immovable property at all of his own after his death and he left a cause of action in negligence against a third party for the benefit of his estate under s 8 of the Civil Law Act 1956, whether in such a case, and in the present case,
   (a) any security should be required under s 35(1)(b) of the Probate and Administration Act 1959; and/or
   (b) any surety to the administration bond is required under O 71 r 34(3)(c) of the Rules of the High Court 1980.

(ii) Whether, in such a case, as in the present case, any fee is payable for extracting the letters of administration whether under Schedule B of the Rules of the High Court 1980, if applicable or otherwise.

On 7 April 1983 the deceased Hee Chun Meng was killed in a motor accident. The petitioner is the brother of the deceased. He applied to take out letters of administration to the estate of the deceased solely for the purpose of instituting the estate claim under s 8 of the Civil Law Act 1956. The deceased left no tangible assets movable or immovable. Consequently a nil return was filed against the 24 items listed in the Schedule to the standard form of the estate duty affidavit.

So the petitioner added an item to the estate duty affidavit stating that the sole asset left by the deceased was, 'an estate claim relating to a traffic accident on 7 April 1983 at $30 per day (ie $780 per month based on 26 working days per month) for 16 years multiplier, ie $780

x 12 x 16 and loss of expectation of life and funeral expenses and costs of letters of administration etc estimated at $149,760 subject to mitigation'.

The estate duty office confirmed by a letter dated 15 January 1986 that the deceased's estate was free of duty. But when the petitioner's solicitors sought to extract the grant of letters of administration to the deceased's estate they were informed by a member of the court registry that an administration bond was required to be executed by two sureties and a fee of $150 paid to the court before the letters of administration could be extracted. It is against this imposition that the petitioner is now seeking relief.

Although only a chambering student Mr Ong Chee Yong of counsel for the petitioner has presented a most comprehensive submission to show why in such a case no administration bond or sureties are required. It is further contended that no fee should be payable to the court for extracting the grant in such cases. To his credit let me say that Mr Ong Chee Yong has urged everything that could possibly be said for the petitioner. It is a matter of regret therefore that I must find against him on his very first venture into the realms of advocacy.

The lynchpin of Mr Ong's submission turns upon the contention that the word 'estate' in s 35 (1)(b) of the Probate and Administration Act 1959 ('the Act') does not include choses in action. The submission is that a chose in action is a thing apart and does not constitute either movable or immovable property. Consequently it is argued that where the only asset is a chose in action the proper view is that the deceased has left no estate.

However, s 2 of the Act provides that 'estate' means all property which if a person died intestate would vest in the Official Administrator under s 39. Section 2 also provides that 'property' includes *a thing in action* and any interest in movable or immovable property. In other words, under the law it is obvious that a thing in action is property. Even though it is intangible it is a right which could move from one person to another depending upon capacity to sue and in that sense a thing in action could be said to be movable property.

The trouble with cases such as the present is that the real value of the chose in action cannot be determined until the claim has been finally resolved by agreement or litigation. Consequently, if s 35 of the Act is applied in the ordinary way security has to be given and it would ordinarily be by bond in the prescribed form by the grantee and two sureties in the amount at which the estate is sworn.

But s 35 is not inflexible. The court can give relief in an appropriate case by increasing or decreasing the number of sureties or dispensing with them altogether. Where the only asset is a chose in action and the administrators would in fact be saddled with a liability in starting litigation there seems to be every reason why the bond should be dispensed or alternatively the petitioner be allowed to extract the grant purely on his own recognizance without any added security or sureties.

Each case must of course be decided on its own facts. In the majority of such cases where the next of kin would include persons under disability, court approval would in any event be required for any settlement and directions are normally given as to the distributive shares of the individual persons for whose benefit the action has been brought.

Another point which arises out of counsel's submission is the contention that no fee should be payable under item 41 of Appendix B to the Rules of the High Court 1980 because the deceased left no estate.

Again with respect I cannot agree with this submission. In the present case the petitioner took it upon himself to value the chose in action and this resulted in a fee of $150 being quoted by the registry as the price payable for the praecipe preliminary to extraction.

However, closer perusal of item 41 of Appendix B shows that the praecipe fee is calculated on the net value of the estate as assessed by the Collector of Estate Duty.

It is very nearly impossible to calculate what a chose in action is really worth until the claim has been settled or adjudicated. Consequently if a petitioner merely lists the asset in question as being a chose in action without giving it any notional value it should still be possible to extract the grant upon payment of a fee of $10. Clearly there is a lacuna under item 41 since it does not provide for assets of unknown value. Until the Rules are amended, O 91 r 2 of the Rules of the High Court does provide a way out. The fees and percentages by this Rule are to be collected in such manner as the Chief Justice may from time to time direct. Just as it is usual for the payment of the estate duty to be postponed where the value of the assets have to be ascertained so also it seems to me that there is nothing to preclude a petitioner in a proper case from applying for the praecipe fee to be postponed until the value of the chose in action has been ascertained.

Mr Ong has drawn my attention to *Datin Peggy Lilian Taylor* v *Leong Yuet Yeng & Anor* [1] and *Kwa Hock Kee & Anor* v *Kwa Kian Seng*[2]. These cases decided that an estate claim can be instituted on the strength of the grant of the letters of administration itself even if the schedule to the estate duty affidavit does not identify the chose in action as an item of asset since it is merely evidence as to whether estate duty is payable.

The court was there concerned with the capacity to sue. That capacity arises as soon as the grant is extracted. But what the cases do show also, is that it is not necessary

for the petitioner to saddle himself with a calculation of what the chose in action is worth at the time of the affirming of the estate duty affidavit.

Consequently I would answer the questions of law posed by the petitioner as follows. Whilst security and sureties to the administration bond can legally be required in all cases where the only asset of a deceased's estate is a chose in action, the actual requirement of such security or surety can be decided only upon the facts of each particular case. I would further state that the minimum fee has to be paid for extracting letters of administration in all such cases. It stands to reason that the petitioner would not go to the trouble of taking out letters if the chose in action did not have some value. The proper fee payable can be taken when the true value of the asset has been ascertained.

This application was brought for the benefit of the estate. Accordingly I order that the costs of and incidental to the application be paid out of the estate.

I would put on record the debt of this court to Mr Ong Chee Yong for the obvious trouble he has taken in this matter

*Order accordingly.*

Solicitors: *Lee & Cheah.*

Reported by *Ng Sheau Jiuan*

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## Public Prosecutor v Shaaban bin Abdul Rahman

HIGH COURT (ALOR SETAR) – KEDAH CRIMINAL TRIAL NO 58-03-87
KC VOHRAH J
28 JANUARY 1989

*Criminal Law – Dangerous drugs – Trafficking in – Discrepancies in evidence presented by prosecution – Discrepancies minor – Whether defence's story sufficient to rebut prosecution's case – Dangerous Drugs Act 1952, s 39B(1)(a) & (2)*

The accused was charged with trafficking in dangerous drugs, ie 409.7 gm of cannabis. According to three police eye witnesses, PW3, PW4 and PW5, the accused and another were spotted at about 3.00 am on 25 December 1986 about to cross a highway. On seeing PW4 and PW5, the accused and his companion ran into Jalan Mahkota which abutted the highway. PW3 and PW4 gave evidence that the accused threw the package he was carrying. The accused was arrested by PW4 but his companion escaped. The package was recovered and found to contain cannabis.

**Held,** convicting the accused:

Although the evidence given by PW3, PW4 and PW5 had some discrepancies, they had no reason to lie and these discrepancies were minor and did not detract from the clear evidence showing that the accused carried a bag, that he ran and that he threw it before his arrest.

**Legislation referred to**

Dangerous Drugs Act 1952 ss 2, 37(a), 37(da)(vi), 39B(1)(a), (2)

*Mohamed Saman bin Mohd Ramli* for the Public Prosecutor.

*Naughton Christie* for the accused.

*Cur Adv Vult*

**KC Vohrah J:** The charge against the accused reads as follows:

> That you on the 25th day of December, 1986 at about 3.00 am at the junction of Jalan Mahkota with Lebuhraya Darulaman, Alor Setar, in the District of Kota Setar, in the State of Kedah, did traffic in on your own behalf dangerous drugs to wit, 409.7 gm of cannabis, and that you have thereby contravened s 39B(1)(a) of the Dangerous Drugs Act 1952 (Revised 1980) and punishable under s 39B(2) of the same Act as amended by Act A553/83.

The case for the prosecution is that three police eye-witnessess, PW3, PW4 and PW5 at 3.00 am on 25 December 1986 spotted two persons, the accused and another male, about to cross a highway. The accused was seen to have a package with him. On their seeing two of the eye-witnessess, PW4 and PW5, who were then riding a motorcycle, the accused and his companion turned around and ran into Jalan Mahkota which abutted on to the highway. PW3, then in a car, and PW4 saw the accused throw the package he was carrying to his right near a 'Stop' sign post. PW3 saw it land in a drain by the side of the sign post. PW4 and PW5 gave chase to the two men and the accused was then arrested by PW4 whilst the companion of the accused escaped although pursued by PW5. PW3 recovered the package and found it to contain dried leaves which, on analysis by a government chemist, PW1, were found to be 409.7 gm of cannabis.

The evidence of Inspector Hasnan, PW3, was that he and two police personnel were proceeding in his car in the direction of Anak Bukit along Lebuhraya Darulaman, which was a dual carriageway. Two other police personnel, PW4 (Detective Constable Tara Singh) and PW5 (Detective Ong Ah Tee) were on a motorcycle riding along the same carriageway in the same direction. This was at about 3.00 am on 25 December 1986 in the vicinity of Taman Merdeka and near a Caltex petrol station. PW3 then saw ahead of him on the other carriageway (for traffic going in the direction of Alor Setar), at the junction between that carriageway and Jalan Mahkota, two male persons. One was wearing a red tee-shirt and he was carrying a black-coloured package. The other man, slightly behind the man in red tee-shirt, was wearing a blue tee-shirt and he was empty-handed.